

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE HENNEPIN COUNTY PERSONNEL BOARD

in the Matter of Girard Copeland,

Employee,

VS.

REPORT OF THE
HEARING EXAMINER

Examiner's Office, Hennepin
county,

Employer.

The above-entitled matter came on for hearing before Richard C.
Lois, duly

appointed Hearing examiner from the State Office of
administrative Hearings,

at 9:00 a.m., on Monday, April 12, 1982, in District Courtroom 22-C of
the Hennepin

Hennepin County Government Center, Minneapolis, Minnesota.

Robert R. Distad, Assistant Hennepin County Attorney, 2000
Government Center,

Minneapolis, Minnesota, appeared on behalf of the
Hennepin

Examiner's office (hereinafter "Employer" or "Office"). James
E. Lindell,

Esq., of Lowe and Schimidhuber, Attorneys at Law, 1610 IDS
Center, Minneapolis,

Minnesota 55402, appeared on behalf of Girard Copeland
(hereinafter

"Employee"). Dr. John I. Coe, Medical Examiner, Dr. Garry Peterson,
Assistant

Medical Examiner, and Mrs. Joan Willett, General Manager, testified on
behalf

of the Employer, and Girard Copeland testified on his own behalf.
The hearing

concluded in the late afternoon of April 12, 1982, and the record in
this matter

ter remained open through June 14, 1982.

This Report is a recommendation, not a final decision. The Hennepin County

Personnel Board will make the final decision in this matter. Pursuant to Minn.

Laws 1980, Chapter 573, 13, subds. 2(b) and (c), unless objections are made,,

Findings of Fact of the Hearing Examiner shall be binding on the board

and upon the parties. If no objections are made,, the Hearing Examiner's recommendation

shall be final upon Board approval. If objections are made,

the Board, upon a review of the record, may accept the recommendations of the

Hearing Examiner with or without additional oral or written argument, may re-

mand the case to the Hearing Examiner for further hearing, or issue its own Decision

and Order. Parties should contact Thomas H. Dudley, Secretary, Hennepin

County Personnel Board, A-300 Government Center, Minneapolis, Minnesota 55487,

telephone number (612)348-7634 to ascertain the procedure for filing objections.

tions.

STATEMENT OF ISSUE

The purpose of this proceeding is to determine whether just cause exists

for the dismissal of Girard Copeland from his position as Senior Medical Investigator

for the Hennepin County Medical Examiner's office under sec. 10.10c. of

the Hennepin County Personnel Rules, and Minn. Stat. sec. 197.46 (1980), while

that no veteran separated from the military service under honorable

conditions can be removed from his
incom-

with a county except for

Based upon, all the roceedings herein, the hearing Examiner makes the fol-

lowing:

OF FACT

1. Girard COP-land, a Veteran of the HoSPital Corps of the United States

from which he was honorably discharged in 1963, began his career with th- Employer as a Morgue Attendant in December, 1970. After approximately three years, he was promoted to the position of Medical Investigator. in January of 1980, Mr. Copeland was promoted again, this time to the position of Senior Med- ical investigator. During this entire period of -employer, Dr. John I. Coe has been the Hennepin County Medical Examiner, or chief executive of tne Em- ployer. The Employee's imudiate supervisor during his entire period of em- ploym-nt as Senior Medical investigator was Joan Willett, the Erployer's Gener- al Manager. Both Dr. Co- and Mrs. Willett consider Mr. Copeland to be- a highly skilled, knowledgeable professional and have rated him as such. he- is on the board of th- State Association of Medical Examiners and Coroners and sits on the Governor's Advisory (council on Sudden Infant Death.

2. the proper procedures for accounting for the intake, retention and re- lease or destruction of prescription drugs has been a matter of great concern for the Employer during the entire period of time relevant to this proceeding. Tie Medical Examiner's office routinely comes into the possession of many thou- sands of dosages of prescription drugs each year because its duties include the temporary retention of tne valuable property, including medications, of any persons who die alone in Hennepin County. The purpose of this is to keep such property safe until it can be picked up by relatives or friends of the dece- dent, or, in the case of most drugs, ultimately destroyed. Drugs ar- often picked up by office personnel in the course of routine investigation of other, accidental or non-accidental deaths as well, for us-- as possible evidence in cause of death determinations, inquiries and other proceedings.

The accuracy of reCord-Keeping with regard to property retained by the office for any period of time- is a high priority of the Employer because such

records are often used as oh, basis for testimony or other evidence-
in civil
and criminal proceedings, and if th- evidence given is not reliable, th-
Offic-
will lose credibility with law enforcement agencies, prosecutors, and
the !-gal
community. Proper record-keeping in connection with prescription drugs
was one
subject of a memorandum by Dr. Coe to all investigative staff on April
11, 1977
(Attachment 2 to Jurisdictional Ex. 1), and part of in-service
training ses-
sions or staff meetings, directed to all investigators and Mr. Copeland
on May
24, 1979, September 6, 1979, Novwmber 15, 1979, and November 4, 1980
(Attach-
ments 3, 4, 5 and 5-A to Jurisdictional Ex. 1; County's Ex. B). In
addition
to concern over the credibility of its records, the Office is aware of
the fact
that its public image could be greatly damaged if any of the thousands
of pills
and other drug materials it handles each year are misappropriated by
office
personnel for their own use or for sale or delivery to others.

3. With respect to weapons coming into the possession of the
Office, Dr.
Coe also issued a policy memo on their retention on April 11, 1977. The
policy
was, and is, to hold such weapons for six weeks, after which the law
enforce-
ment agencies, in criminal cases, or families of decedents in all other
cases,

to L- contacted for surrender of the weapons to them (Dr permissin-)n to dis-

.-apnls '@.3 -,- @ee fit, (Attachment - to jurris(dictional Ex. 1).

overwhlming of weapons left with the Office after the foregoing procedures had run their coarse have, over the years, been auctioned off by the County, or, in the case of illegal weapons such as sawed-off shotguns or zip guns, destroyed by melting them down. A small number of weapons have, however, been retained by the Office over the years for the purpose of teaching and demonstration to new medical residents who are assigned to the Office but who are not familiar with the characteristics of these weapons to show such people how or why these characteristics can cause certain Lunnique injuries or wounds. these weapon are kept in a locked safe within the Office's vault, in effect under double lock, to which safe only three persons, including Mr. Copeland had access during the relevant time period. It was an unwritten Office rule that the weapons so kept were for teaching or demonstration purposes only, and not to be taken off the Office's premises at 730 South 7th Street, Minneapolis.

4. The position which Mr. Cop-land filled after January Of 1980, Senior Medical Investigator, was a supervisory post. in that position, the Employee held general supervisory authority, including the authority to initiate and impose discipline, over four Medical Investigators, two investigativ- Assis- tants, and two Morgu Attendants, plus any part-time or on-call employees who worked under him on an 'as needed' basis.

In connection with his supervisory duties, Mr. Copeland issued a Mem- orandum to the "Investigative Staff" on October 22, 1981 on the subject of 'Attitude and conduct within the office'. Among the directives of this seven-par- agraph memo was the admonition that "Any one caught taking any property of any type will be fired. . . if you think I am kidding, then I suggest you give me a try." (Attachment 12 to Jurisdictional Ex. 1).

5. on January 18, 1982, Po. Copeland was in the process of destroying the drugs which had been brought into the Office on December 11, 1981 as the pro- perty of one R. H., a deceased person. in accordance with Office procedures,

the drugs recovered from R.H.'s home were inventoried on an Office form, called a 'Drug Sheet' 13 to jurisdictional Tx. 1). Among the -ntri-s mad- on the "Drug Sheet" for R.H. on January 18, 1982, was than the employeo, him- self, destroyed On" bottle Containing 19 tablets, fiV- Miliigrams "aCA, Of Val- i ten. Although Mr. Col-lan@ mad-? this entry, it was, in fact, false, and he the p-11 bott,- containing the 19 Va',-,"@m c)ills an(,,, @)I-,t it in '-,is d@st', (County's Ex. C).

As of January 18, 1982, the Employee had been 'seriously contemplating suicide' for 'some time prior to that". (Ti. 252). he had separator from his wife since approximately Septemoer of 1981, and was depressed about that and about his job.

6. During mid-January of 1982, Mr. Copeland removed from the safe in the office vault a .38-caliber Detective Special revolver handgun, Serial No. 919552, which had been retained by the Office for teaching and demonstration purposes after not Doing reclaimed by the relatives of one C. H., who had died on December 27, 1975. The EMPLOYEE to* the weapon from the office premises and transported it to Fairview-Southdale Hospital for use by him in a lecture presentation. Thereafter, he took the gun home with him, left it on his dras- ser, and 'didn't think anything of it." (Tr. pp. 266-267). Cop-land never

asked- - Dr. Coe ot Mrs. Willett for permissin t take this weapon out of the

off .

7. During the evening of February 14-15, 1962, Mr. Copeland attempted suicide This suicide attempt was by ingesting the 19 valium pills the

employee claimed he had destroyed in connection with closing the R.H. case on

January 18. The pill bottle was found at Copeland's side, as he lay on his

bed, and the .38 caliber revolver which he had failed to return to the office

was in the room as well.

Di the last workday prior to his suicide attemapt, the Employee and Dr.

one had engaged in a lengthy, and to Mr. Copeland, unsatisfactory and frustrat-

ing conversation regarding his role and inter-personal relationships at the

office. Upon leaving work that day, Mr. Copeland removed the Valium bottle in

question from his desk and took it home with him.

Mr. Copeland spent five days in a hospital recovering from the suicide

attompst and has been under regular psychiatric care for his depression ever

since.

8. (Ai February 26 1982, Mr. Copeland was advised of the Office's inten- cion to dismiss him from its employment in a letter from Dr. Coe. This letter

informed him that he was, effective that day, being placed an 'paid suspension

with intent to dismiss' and informed him of his right to ,,-quest a hearig.

in the letter, Coe charged th- Employee with 'misconduct', and listed the--

bases for that charge, as follows:

- 1) theft of a controlled substance brought into this office on Case No. 81-2476;
- 2) falsification of an official record on Cas- No. 81-2475 in which you attested that you personally destroyed the above-referenced controlled substance; and
- 3) unauthorized removal of a lethal weapon (colt detective-special 2', blue steel with brown wooden handle, serial AD. 919552).

Mr. Copeland filed a timely appeal of the proposed dismissal and this hearing process followed.

Based upon the foregoing Findings of Fact, the Hearing examiner makes the

following:

Conclusions

1. That the Hearing Examiner and the Hennepin county Personnel Board have jurisdiction in this matter pursuant to Minn. Laws 1980, Chapter, 573, sec 4, subd. 2 and 3, and Minn. Stat. SS 15.052, subd. 8, and 197.46 (1980).
2. That the Notice of hearing issued by the Hennepin county Personnel Board is proper and that all procedural requirements have been complied with by both the Employer and the Employee.
3. That pursuant to Minn. Stat. s 197.46 (1980), a veteran separated from military service under honorable conditions may be removed from public employment only upon a showing of incompetency or misconduct after a hearing upon due notice, upon stated charges, in writing.
4. That Girard Copeland is a veteran separated from the military service under honorable conditions within the meaning of Minn. Stat. sec. 197.46 (1980).
5. That the Employee, Girard Copeland, committed misconduct in connection with his public employment within the meaning of Minn. Stat. sec. 197.46 (1980) by his falsification of an official property record on January 16, 1982, when he-

false!, aotast-A that he had personally destroyed 95 milligrams of Valium which had oTm brought into the (Dffic@ in connection with the- death of one R.H. on

11, '1981; this act of misconduct is just cause for dismissal from em-
ployment under Hennepin County personnel Rule 10.10.

6. That !he Employee, Girard Copeland, committed misconduct in connection with his public employment within the meaning of minn. Stat. 5 197.46 (1980) by his theft of 95 milligrams of Valium from the Employer's premises on or about February 14, 1982; this act of misconduct is just cause for dismissal from employment under Hennepin County Personnel Rule 10.10.

7. That the Employee, Girard Copeland, violated the policies and rules of his employer by his unauthorized removal from the Employer's premises of a .38-caliber Detective Special revolver, and his retention thereof in his residence for approximately one month until February 15, 1982; these acts are not miscon-
duct in connection with his public employment within the meaning of Minn. Stat. sec. 197.46 (1980), and is not just cause for dismissal from employment under Hen-
nepin County Personnel Rule 10.10, in and of itself.

S. That the acts of the Employee noted in Conclusions 5 and 6, taken together, constitute just cause for dismissal from his public employment with the Employer for misconduct within the meaning of Minn. Stat. sec. 197.46 (1980), and
hennepin County Personnel Rule 10.10.

9. That the Employer has proved, by a preponderance of the evidence, that just cause exists for the dismissal of Girard Copeland from his public employ-
ment on the grounds of misconduct.

Based upon the foregoing Conclusions, the Hearing Examiner makes the fol-
lowing:

R E C O M M E N D A T I O N

IT IS RESPECTFULLY RECOMMENDED that Girard Cop--land be dismissed from his employment as Senior Medical investigator for the Hennepin County Medical Exam-
iner's Office.

Dated this day of July, 1982.

RICHARD C. Luis
State Hearing Examiner,

M E M O R A N D U M

Hennepin County Personnel Rule 10.10b. states, in relevant part, that
employee who has permanent status shall be dismissed except for just cause..

And Rule 10.10C. adds 'employees who are military service veterans
shall be

dismissed in accordance with Minnesota Statutes, 197.46".

Minn. Stat. sec. 197.46 (1980) states, in relevant part:

ND person holding . . . employment in the several counties

. . . in the state, who is a veteran separated from the military
.Service under honorable conditions, shall be removed from such
. . employment except for incompetency (or misconduct shown
fter a hearing, upon due notice, in writing.

the above-noted rule and statute, it is clear that "just cause" for the dismissal of the Employee in this case can only be established if the evidence on record in this establishes that he committed 'misconduct' in connection with his It is the opinion of the Hearing Examiner that the evidence herein meets that standard.

Th- Minnesota Veterans Preference Act does not define 'misconduct' in public employment. nor has the Minnesota Supreme Court specifically interpreted that term as it is used in Minn. Stat. 197.46 (1980). However, in the case of Tilseth v. Midwest Lumber Company, 295 Minn. 372, 204 N.W.2d 644 (1973), the Court defined "misconduct" for the purposes of the Minnesota Employment Services Act (unemployment compensation benefits) as:

. . . conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee

The above definition defines misconduct for the purpose of determining whether a claimant for unemployment benefits should be disqualified from receipt of those benefits. Since the Minnesota Employment Services Act is remedial legislation, the evidentiary standard for showing misconduct under it is high. The

conduct of the Employee herein, however, meets that standard.

The record clearly shows that Mr. Copeland falsified a 'Drug Record' entry regarding one R.H. and misappropriated for his own use 95 milligrams of Valium he allegedly destroyed in connection with that case. In 'the opinion of the Hearing Examiner, this act (really two separate acts) constitutes willful violation of the standards of behavior that the Hennepin County Medical Examiner's office had a right to expect from its Senior Medical Investigator, such that his dismissal for misconduct is justified.

First, the Employer has established that the credibility of its Office depends, to a great degree, upon the accuracy and reliability of the records it keeps. The keeping of accurate records with respect to drugs coming into the office's possession was heavily stressed in a policy memo dated at least four

in-service sessions involving Mr. Copeland during the five years preceding the falsification incident of January 18, 1982. The reason for this emphasis is obvious. Not only must Cho Office be able to trace what to drugs in its custody, but it must also be able to establish that no drugs leave its custody without being destroyed or delivered to appropriate authorities. The fact that the record falsified by the Employee was not on a case which was likely to be investigated further is immaterial - the Employer has a legitimate reason for not tolerating one falsification of any drug records.

In addition, the Employer has a legitimate reason for not tolerating the theft of drugs from its custody. Because of the fact that many thousands of doses of controlled substances come into its possession annually, the Employer has a bona fide interest in seeing to it that it does not, in fact or rumor, become a source for the distribution of such drugs. The record shows that the Medical Examiner's Office is the temporary custodian of an infinite variety of personal property belonging to persons in the County who die alone or proper seized in connection with death investigations, and as such, it is important that all of its employees be scrupulously correct and honest in the handling of that property. Drugs, and the handling thereof, constitute a very vital and obvious part of that general responsibility. The Employee in us,

that responsibility (on October 22, 1981
when

hen
action his role as a supervisor over approximately o,one-half of
the total in the office hee a that no, the -ft of any
kind of would be tolerated, and ,-hat any one 'caught' committing
such an act would have his employment terminated. Yet, three months later, he
broke that very rule that he, himself, threatened to fire others for breaking.
employee has defended these acts by introducing testimony
from himself and a letter from his psychiatrist tending to establish that he
was depressed and contemplating suicide when he committed the acts of record-
falsification and drug theft. this is probably correct, and certainly, the
ultimate and tragic events of February 14-15 enforce the credibility of those
assertions. However, the Hearing Examiner is not persuaded that M.-. Copeland
did not know what he was doing, or did not know what the consequences of his acts
would be in relation to his employment (should he survive his suicide
attempt) when he made the false entry on the "Drug Sheet" and when he took the Valium
out of the office.

While the Employee testified that he did not think through the
consequences of not destroying the Valium at the time he 'impulsively' noted
its destruction and, in fact, hid the bottle in his desk, this testimony simply is
not credi- ble. Kr. Cop--land was considered by his supervisors at the office
to be a 'superior' medical Investigator. To the Hearing Examiner, that
analysis means that he has an intelligent mind that thinks logically. a
supervisor, he had recently authored a memo reiterating that the Office would
punish the sort of act he was committing with dismissal. Copeland kept the
drugs for four weeks before taking them from tne office and using them, a fact
that suggests calculation, not impulse. It is suggested that if the
consequences of his acts with respect to violating Office procedures never occurred to
the Employ- ,,, that this was because he thought he would not be "caught"
until after he

was dead. While such thinking implies that Mr. Copeland was depressed and possibly preoccupied with destroying himself during the period in question, there is no evidence showing that he did not intend to falsify the records or to steal the drugs in order to accomplish his purposes.

of the .38-caliber revolver does not rise to the level of severity of the misconduct regarding one valium because there was I() written policy against removal of the gun from the office and the record fails to reflect that Mr. Copeland was ever told that he was not allowed to take it out of the office what were, in effect, 'teaching aids'. The taking of the gun to Fairview-Southdale Hospital, and keeping it at home without clearance from Mrs. Willett or Dr. Coe, reflects very poor judgment on the part of the Employee, but does not rise to the level of 'misconduct' meriting dismissal under the Veterans Preference Act because the policies and rules violated were unwritten and not widely circulated or repeated.

The Employee has argued that the lack of careful record-keeping with respect to the weapons kept for teaching purposes shows that the Employer is, in effect, inflating the Employee's admitted violations of record-keeping with respect to drugs into something much more important than it really is.

This argument is not persuasive because the Employer's concern with proper documentation regarding drugs is well established on the record and, in addition, Dr. Code conceded in his testimony that, had the taking of the revolver out of trip

often Mr. Copelands only violation of Office rules, h- would not have suspended Copeland with intent to dismiss. In other words, the employee is correct in his argument certain gun records were not stressed by the Em- ployer, but wrong in thinking that this fact can minimize the effect of falsi- fying drug records and stealing drugs.

The same basic analysis applies to another argument offered by the Employ- ee - that Office employees had committed certain offenses in the past and not received punishment as severe as that now being proposed for him. This argu- ment is not directly relevant because there is no evidence of disparate treat- ment for anyone in this Employee's position, for the same or similar acts.

In addition, the Employee advanced the argument that the recent public statement by the Hennepin County Attorney that one of his Assistants will not lose his job, in spite of having been accused of falsifying a prescription in order to obtain a drug to which he is addicted, even if he is subsequently convicted, should be seen to rule out a finding of misconduct against him.

The Hearing Examiner is not persuaded because these two cases involve separate entities headed by two chief executives, the Medical Examiner and the County Attorney, who made independent decisions within their own discretion of wheth- er or not to initiate disciplinary action against their employees.

In other words, even if the Assistant County Attorney committed 'misconduct' of a nature equally or even more severe than did Mr. Copeland (a fact not shown on this record), the decision not to initiate discipline is an executive decision of the County Attorney which is not binding on Dr. One in this case.

Therefore, Mr. Copeland's actions have been analyzed on their own merits within the con- text of his own office, and it is the opinion of the Hearing Examiner that any effort to look at and consider the 'County-wide' disciplinary situation is in- appropriate for him and more appropriate for the Board to consider in deciding the appropriate degree of punishment, if it upholds the Hearing Examiner's conclusion that Mr. Cop-land committed "misconduct" under the statute. it

should also be remembered that the handling and accounting for of drugs is an integral part of the function served by the Medical Examiner's Office, whereas the County Attorney's Office is not charged with such duties.

Finally, top Employee argues that, should misconduct be found, he should be allowed to return to employment of the Medical Examiner's office as a Medical investigator without supervisory authority. As was discussed in the preceding paragraph, the appropriate disciplinary action to be taken is to the Board, if it finds that Copeland committed "misconduct". The Hearing Examiner recommended dismissal only from the Employee's position as a Senior Medical investigator, but the Board is advised that Dr. Coe testified that he did not want to take the Employee back in any capacity at this point because he feels that there is no way that Mr. Copeland could function within the Office and because he (Coe) had very little trust in the Employee after the events of mid-January to mid-February came to light (Tr. 70-71). It is also appropriate, in deciding the ultimate disposition of this Employee, to consider the fact that he used drugs in his suicide attempt and that continued employment of him in an atmosphere where it is easy to gain possession of all types of controlled substances may contribute to a repetition of his self-destructive behavior.

This is especially so because of the relatively short time that has passed since Mr. Copeland's tragic suicide attempt and in light of the fact that the record fails to establish that he has fully recovered from the depression which led him to take such desperate action.

R.C.L.

